

December 1961

## Federal Courts--Amount in Controversy--Aggregation of Claims Against Co-defendant Insurance Companies

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### Recommended Citation

Edward A. Zagula, *Federal Courts--Amount in Controversy--Aggregation of Claims Against Co-defendant Insurance Companies*, 64 W. Va. L. Rev. (1961).

Available at: <https://researchrepository.wvu.edu/wvlr/vol64/iss1/11>

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**Federal Courts—Amount in Controversy—Aggregation of Claims  
Against Co-defendant Insurance Companies**

*P* was a passenger in his own automobile being driven by a friend. He was injured in a collision with *D1's* truck. *P* brought a diversity action in the federal district court, alleging that the combined negligence of both drivers caused his injuries. The forum was Louisiana where under a direct action statute, an injured party may bring an action directly against the tort-feasor's insurer. *P* joined *D1* (truck owner), *D2* (truck owner's insurer), *D3* (friend's insurer) and *D4* (*P's* insurer) as defendants and sought damages of 150,000 dollars. *D4's* liability coverage for personal injury to *P* was limited by the terms of the policy to 5,000 dollars. By the terms of his friend's liability policy, *D3* was liable only in excess of *D4's* coverage. *D4* sought dismissal asserting that the amount in controversy does not exceed the sum or value of 10,000 dollars as required, 28 U.S.C. § 1332(a) (1) (1958). The court dismissed the cause as to said insurer. *Held*, affirmed. Claims against defendants were separate and distinct and the test of federal jurisdictional amount is the value of each claim and not their aggregate. *Jewell v. Grain Dealer's Mut. Ins. Co.*, 290 F.2d 11 (5th Cir. 1961).

The statutory provision upon which *P* relies stipulates that federal courts shall have jurisdiction where the "matter in controversy" exceeds the sum or value of 10,000 dollars without reference to aggregation of claims or joinder of defendants. Jurisdiction or lack of jurisdiction as to *D4* is entirely dependent on the meaning of "matter in controversy."

The general interpretive view and two groups of cases constituting exceptions were considered by the court. It failed to consider a third exceptional group of cases which may have influenced its decision. The general view stems from *Walter v. Northeastern R.R.*, 147 U. S. 370 (1893), which held that when two or more plaintiffs, having several interests, unite for the convenience of litigation in a single suit, it can only be sustained as to those whose claims exceed the jurisdictional amount and when two or more defendants are sued by the same plaintiff in one suit the test of jurisdiction is the joint or several character of the liability to the plaintiff.

The court, in the instant case, following the general view, relied on: *Citizen's Bank of La. v. Cannon*, 164 U.S. 319 (1896);

*Northern Pac. R.R. v. Walker*, 148 U.S. 391 (1893); *Walter v. Northeastern R.R.*, *supra*; and *Cornell v. Mabe*, 206 F.2d 514 (5th Cir. 1953). In all of these cases the plaintiff asserted separate and distinct claims against several defendants and the respective courts held the test of existence of jurisdiction is the amount in controversy (which is the value of the matter in controversy) as to each claim and not their aggregate. Also in the present case the court cites *Payne v. State Farm Mut. Auto. Ins. Co.*, 266 F.2d 63 (5th Cir. 1959), which presents an interesting question: Father of the plaintiff sued the defendant insurer for 50,000 dollars for personal injury to his minor child. The insurer by virtue of policy terms was limited to 10,000 dollars personal injury liability and 5,000 dollars property damage liability. Defendant moved for dismissal on grounds of lack of jurisdictional amount. Plaintiff amended the complaint to include fifteen dollars clothing damage in order to maintain the litigation in the federal court. The court ruled that the clothing damage was the father's loss and not the loss of the plaintiff; therefore, the plaintiff and his father as co-plaintiffs were suing the defendant on two separate and distinct claims which could not be aggregated to make up the jurisdictional amount. The first exception noted provided that claims against two or more defendants can be aggregated to attain jurisdictional amount in controversy if they are jointly liable to the plaintiff. *Aetna Ins. Co. v. Chicago, Rock Island & Pac. R.R.*, 229 F.2d 584 (10th Cir. 1956). The second exception noted in the *Aetna* case, *supra*, provided for the extension of the first exception to suits against two or more insurance companies, each of which has separately insured against a stated risk for a sum less than jurisdictional amount. A group of cases constituting a third exception to the general view was not considered. This latter group takes cognizance of the problem of apportioning the plaintiff's loss or damage among several defendants who have contributed severally to injure the plaintiff. *McAtamney v. Commonwealth Hotel Const. Co.*, 296 Fed. 500 (S.D. N.Y. 1924), held: A bill asserting claim of 2,800 dollars against one defendant and 2,500 dollars against another defendant and further alleging that assets and property of the two defendants are commingled so that only by trial could it be adjudicated whether claims should be apportioned, partly to one and partly to the other, was held to state a common claim in excess of jurisdictional limit and the federal court had jurisdiction. In the instant case, though the assets of the various defendants are not in issue it appears that proper ap-

portionment of liability where part of the liability is primary and part is excess could best be determined in one trial under the theory of equity. Though not applicable to the circumstances of the instant case, a fourth type of exception is permitted. *Skokomish Indian Tribe v. France*, 269 F.2d 555 (9th Cir. 1959), held that where land involved in a quiet title action was comprised essentially of a single tract, the value of the entire tract was to be considered as jurisdictional amount in controversy even though interest in the tract was claimed by several defendants.

The court adverted to the general interpretation of "matter in controversy" in spite of the fact that the circumstances of the cases cited in support of its decision appear to be readily distinguishable from those of the instant case. *Walter v. Northeastern R.R.*, *supra*, refused the plaintiff the right to join several counties as defendants in a federal court injunction suit to avoid payment of locally assessed taxes, where the taxes due to any one county were not sufficient to meet the jurisdictional amount. The court established the rule that claims could not be aggregated against multiple defendants unless the liability of the defendants was joint and not several. The plaintiff in the *Walter* case was piling up distinct claims, but see *Liberty Mut. Ins. Co. v. Tel-Mor Garage Corp.*, 92 F. Supp. 445 (S.D. N.Y. 1950), which held that plaintiff, insurer who became subrogated to the rights of three assureds who lost their automobiles in a fire caused by the negligence of the defendants, could properly combine the three claims to constitute the amount required to confer jurisdiction. *Sudderth v. National Lead Co.*, 272 F.2d 259 (5th Cir. 1959), permitted plaintiff to join several defendant converters where the total amount in controversy exceeded the jurisdictional minimum but where the defendant's individual liability did not. The converters in this case did not act in concert so it is doubtful that their liability could be considered joint. The latter two cases seem to refute the general interpretation of the *Walter* case, *supra*, and the two groups of exceptions stated in the *Aetna* case, *supra*. The general view plus the many exceptions provides a court with a dilemma.

Perhaps a different ruling would have resulted, had the court utilized the definition approach furnished by *Associated Press v. Emmett*, 45 F. Supp. 907 (S.D. Cal. 1942), wherein "matter in controversy" was defined as the subject of litigation, the matter upon which the action is brought and issue is joined. In the instant case

the *P* sought satisfaction of one claim, not two or more claims, and the specific matter in controversy upon which his claim is based was the accident caused by the negligence of the defendants. In Louisiana the liability insurers are liable in solido with their insureds and they occupy the same position as the insured for purposes of litigation. In *Gray v. Hartford Acc. & Indem. Co.*, 31 F. Supp. 299 (W.D. La. 1940), the court held that where insured parties of two different liability insurance companies are joint tort-feasors, their respective insurers may be regarded as incurring a liability to the injured person as themselves joint tort-feasors, and as being liable solidarily to such injured person. It was further held that all related matters growing out of one occurrence, a highway accident, will be settled, definitely and clearly, in one action. Joint tort-feasors, if there be any, will be enabled to exercise their legal right to demand contribution among themselves. The court stated "this is the law of Louisiana and it is fulfilled thus in one suit." It further stated that it is "well known that more truth reaches the surface if all related matters be considered and all involved persons be heard at one and the same trial . . . the substantive law of the state is to be applied by way of the procedural law of the federal courts."

The propriety of the decision in the instant case must be determined by a fundamental consideration of the purpose of diversity actions. Diversity jurisdiction originated to protect non-resident litigants against the threat of state court provincialism but from the very first grant of original jurisdiction by the Congress to inferior federal courts a jurisdictional limitation in dollar amount was established. The amount first involved was 500 dollars, and no doubt was justifiable on the grounds that transportation difficulties in colonial days were a proper reason for denial of federal jurisdiction in truly trivial claims. In short, the cost of getting to court and the inconvenience of getting there was not worth the effort unless some minimum claim was involved. Subsequently, the amount in controversy limitation has been successively raised, and it is now used simply as a valve to restrict the number of cases which may be originated in the federal courts. It becomes difficult at this point to relate the dollar amount of a claim to the importance or fairness of having a federal forum available to hear such a claim, and the rules which permit certain kinds of claims to be aggregated in order to attain the jurisdictional minimum become, at best, arbitrary. It would seem appropriate under such circumstances, that once a controversy is in the federal court, to permit all elements of that

controversy to be resolved in a single suit in order to conserve judicial time and effort.

*Edward Andrew Zagula*

### **Future Interests—Rule Against Perpetuities—Construction of Interest as Vested or Contingent**

The residuary clause of *T*'s will provided that the balance of his estate was to go to his wife, *W*, for her lifetime, and then to his two daughters, *X* and *Y*, for their lifetime, "and upon their death their share is to be divided equally between their children when they reach the age of 25 years." *T* left surviving him *W*, *X*, *Y*, and five grandchildren who were all minors. In an action to construe the will, the trial court held that the remainder interest to the grandchildren was void because it violated the rule against perpetuities. *Held*, reversed. The remainder in fee vested in the infant grandchildren at testator's death, subject to open so as to make room for any children thereafter born to testator's daughters. At the death of the daughters of the testator the quantum of interest of each of the grandchildren will become fixed and certain. The grandchildren will be entitled to possession immediately upon the death of the daughters, and, according to the wishes of the testator, the property is not to be partitioned and allotted to the grandchildren until they reach the age of 25 years, or until the death of their mother, whichever is later. *Wachovia Bank & Trust Co. v. Taylor*, 120 S.E.2d 588 (N.C. 1961).

The principal case presents an interesting problem of construction on which the courts are not entirely in harmony. The first issue which arises in these cases is whether the words, "when," "at," "after," and other similar words, make a testamentary gift contingent. For if the gift is contingent, the rule against perpetuities will invalidate the gift if it is possible that the gift might not vest within lives in being and 21 years thereafter.

The early English decision in *Clobberie's Case*, 2 Vent. 342, 86 Eng. Rep. 476 (C.P. 1676), laid the groundwork in this area of the law. The court there held that, if there be a gift to *A* to be paid at the age of 21, the interest in *A* is vested; but, if there be a gift to *A* at 21, the interest in *A* is contingent. In the first case *A* owns the gift absolutely at the time it is made to him, but his enjoyment of the gift is withheld until he reaches 21. However, in